

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHIGAN ASSOCIATION OF
GOVERNMENTAL EMPLOYEES

Plaintiff-Appellee

v

STATE OF MICHIGAN and OFFICE OF
THE STATE EMPLOYER

Defendants-Appellants.

Supreme Court No. 147511

Court of Appeals No. 304920

Court of Claims No. 10-000037-MK

**BRIEF OF THE MICHIGAN CIVIL SERVICE COMMISSION AS *AMICUS*
CURIAE IN SUPPORT OF APPELLANTS' APPLICATION FOR LEAVE TO
APPEAL**

Christopher W. Braverman (P70025)
Assistant Attorney General
Attorney for *Amicus Curiae* Michigan
Civil Service Commission
Labor Division
P.O. Box 30217
Lansing, MI 48909
(517) 373-2560

Dated: March 16, 2016

INTRODUCTION AND REASONS FOR GRANTING THE APPLICATION FOR LEAVE TO APPEAL

The Civil Service Commission, under MCR 7.306(D)(2), submits this brief as *amicus curiae* in support of Defendants-Appellants' application for the narrow purpose of confirming and clarifying two issues for the Court's consideration. First, as the Court noted in its Order requesting supplemental briefing, the Commission is vested with constitutional authority to "fix rates of compensation" for all classified employees. Under 75 years of Michigan Supreme Court decisions, including the 2015 decisions¹ for which this matter was held in abeyance, the Commission's authority has been held to be plenary within its sphere. It is therefore not limited by any consensus agreement or impasse panel recommendation. Second, at the time the Commission acted on whether to approve the recommended three percent increase for fiscal year 2011, it was fully aware of the 2007 consensus agreement involving the parties in this case.

The Commission, therefore, supports the Defendants-Appellants' Application for Leave to Appeal, which relies in part on the Commission's plenary authority over classified employees. A contractual claim in the Court of Claims cannot be used to usurp the Commission's constitutional authority to fix rates of compensation and regulate conditions of employment.

¹ This matter was held in abeyance pending the following decisions from this Court, both of which involved questions of the Commission's authority: *UAW v Green*, 498 Mich 282 (2015) and *Mich Coalition of State Emp Unions v State of Mich*, 498 Mich 312 (2015).

ARGUMENT

I. The Commission has plenary and absolute authority to establish the rates of compensation for classified employees.

The Commission is a constitutional body vested with certain enumerated powers. Those powers include the authority to “fix rates of compensation for all classes of positions” in the state classified service and otherwise “regulate all conditions of employment in the classified service.” Const 1963, art 11, § 5.

A. The Commission has plenary power over subjects that fall within its sphere of authority.

This Court has long held that when the Commission is acting on or regulating subjects within its sphere of authority, the Commission’s power with respect to those subjects is plenary. See, e.g., *Plec v Liquor Control Comm*, 322 Mich 691, 694 (1948). The Commission has “plenary and absolute powers in its field.” *UAW v Green*, 498 Mich at 288, quoting *Viculin v Dep’t of Civil Serv*, 386 Mich 375, 398 (1971). “We do not question the commission’s authority to regulate employment-related activity involving internal matters such as job specifications, compensation, grievance procedures, discipline, collective bargaining and job performance” *Council No 11, AFSCME v Civil Service Comm*, 408 Mich 385, 406-407 (1980). This case involves a subject that falls within the Commission’s sphere of authority.

B. The power to “fix rates of compensation” is expressly enumerated in the Constitution.

Fixing the rates of compensation is one of the expressly enumerated subjects that fall within the Commission’s sphere of authority. A focal point of this Court’s 2015 decision on legislation over employees’ pension benefits was the “common understanding” of the term “rates of compensation.” *Mich Coalition of State Emp Unions v State of Mich*, 498 Mich 312, 323-328 (2015). This Court concluded that “rates of compensation,” when the 1963 Constitution was ratified, was commonly understood as “salaries and wages.” *Id.* at 323. This was explained to mean essentially “amounts paid out to employees in a paycheck.” *Id.* at 324. Accordingly, when the Commission is acting on salaries and wages, its power to act is plenary.²

C. This case involves fixing the rate of compensation for certain classified employees.

There appears to be no dispute that the subject of the Commission’s action in this case related to fixing rates of compensation for nonexclusively represented employees (NEREs) in Michigan’s classified service. The parties – but not the Commission – “reached a consensus agreement *with regard to compensation* for fiscal years 2009-2011,” which included recommendation of a “three percent increase for 2011.” *Mich Ass’n of Gov’tal Emp v State of Mich*, unpublished opinion per curiam of the Court of Appeals, issued June 20, 2013 (Docket No 304920), p 2 (emphasis added).

² Rates of compensation are also conditions of employment, which the Commission also has plenary power to regulate under Const 1963, art 11, § 5. See, e.g., *Coalition of State Emp Unions*, 498 Mich at 334-35.

Under Civil Service rules, there is a “coordinated compensation panel” that makes recommendations to the Commission on compensation changes for NEREs. Civ Serv R 5-1.3. The Commission, however, retains ultimate authority for amending the compensation plan. Civ Serv R 5-1.2. There is no provision in the Commission’s rules or regulations making the panel’s recommendation, or any consensus agreement, binding on the Commission or limiting the Commission’s ability to act.

Here, even though the Office of State Employer (OSE) proposed no increase for the 2011 fiscal year, the panel recommended that the Commission “grant the three percent general wage increase as originally agreed to by the parties.” *MAGE*, at 2. The Commission, however, voted in a 2-2 split on a motion to approve the panel’s recommendation, which resulted in the motion failing and no general wage increase for NEREs for the 2011 fiscal year. (Ex 1, Commission Minutes, p 7.)

The Commission’s decision to award no increase despite the consensus agreement and impasse panel recommendation falls squarely within the Commission’s plenary constitutional power to “fix rates of compensation” for classified employees. *Coalition of State Emp Unions*, 498 Mich at 334. Both of the 2015 decisions recognized the Commission’s plenary authority in its sphere.³ The Commission therefore supports Defendants-Appellants’ application to the extent it relies on and reaffirms the Commission’s plenary power.

³ *Coalition of State Emp Unions*, 498 Mich at 334-335; *Green*, 498 Mich at 288.

II. The Commission acted with full knowledge of the consensus agreement between the parties.

The Commission also wishes to clarify for the Court that it was fully aware of the consensus agreement between the Michigan Association of Governmental Employees (MAGE) and the OSE. As indicated in the minutes from its February 10, 2010 meeting, the Commission was presented with the panel's recommendation for a "three percent across-the-board pay increase effective October 1, 2010." (Ex 1, p 6.) The Commission was also presented with information from the State Budget Director and the OSE regarding the decline and deficits in the general fund. (*Id.*) The OSE specifically stated to the Commission that "due to projected deficits for FY11 and FY12, the administration cannot support the consensus agreement signed in 2007 for FY11, and therefore, cannot support the three percent increase due to the change in circumstances since 2007." (*Id.*) Several parties, including representatives of MAGE, the Association of State Employees in Management, and individual NEREs, voiced support for the increase. (*Id.*) Their comments included references to the voluntary consensus agreement and the alleged "breach of contractual commitment made by OSE" to MAGE. (*Id.*)

The Commission highlights these facts to illustrate that when the motion to approve the pay increase was made, the Commission acted with full knowledge of both sides' positions. In not approving any increase, the Commission was simply exercising the plenary authority described above to fix rates of compensation. Although the Commission's rules and regulations governing this process allow consensus agreements and panel recommendations, they do not in any way limit or

abridge the Commission's ultimate authority to reach a decision contrary to those agreements or recommendations.

CONCLUSION AND RELIEF REQUESTED

The Commission supports the Defendants-Appellants' Application for Leave to Appeal in this case to the extent it relies on and reaffirms the Commission's plenary constitutional authority to fix rates of compensation and regulate conditions of employment for the employees involved in this matter.

Respectfully submitted,

/s/ Christopher W. Braverman

Christopher W. Braverman (P70025)
Assistant Attorney General
Attorney for *Amicus Curiae* Michigan
Civil Service Commission
Labor Division
P.O. Box 30217
Lansing, MI 48909
(517) 373-2560

Dated: March 16, 2016